

# Case Law Today - September 2011

## DVD Video

Multimedia I.D. Number: **NA**

CPT Hours: **NA**

DVD Shipping Date: 10/24/11

## AVAILABLE ONLINE

Registered users of the POST Learning Portal have 24/7 access to *Case Law Today* monthly episodes. Visit [www.lp.post.ca.gov](http://www.lp.post.ca.gov) for more information.



California Commission on Peace Officer Standards and Training

### **Miranda: You Really Need All Four Advisements**

*with Daniel McNeerney, Superior Court Judge, Orange County, CA*

If an officer fails to give any one of the four Miranda advisements, the statement is subject to suppression. *Case cited: People v. Polk (2010) 190 CA4 1183. (6:16)*

### **Lawful to Superimpose Child's Head On Pornographic Photo**

*with Jeff Rubin, Deputy District Attorney, Alameda County, CA*

There is no violation of the statute prohibiting possession of child pornography if the person depicted is an adult engaging in specified sexual acts but a real child's head from some other non-sexual photograph is superimposed on the adult's body since the statute requires a real child to have been used in the production of the pornography and to have actually engaged in or simulated the specified sexual acts. *Case/Statutes cited: People v. Gerber (2011) 196 Cal. App.4th 368; Pen. Code § 311.11. (6:22)*

### **Cocaine Base Equals Crack Cocaine**

*with William W. Bedsworth, Appellate Court Justice, State of California*

The United States Supreme Court has decided— apparently once and for all—that there is no legally cognizable difference between cocaine base and crack cocaine. They've held that statutes that refer to "cocaine base" refer equally to crack cocaine, cocaine paste, and cocaine base. Justice Bedsworth explains why that is, and why ordering cocaine is different. *Case cited: DePierre v. United States (2011) 1315 Ct. 2225, 179 L ed 2d 114. (4:32)*

### **Officer Can Decide When DUI Blood Test Feasible**

*with Jeff Rubin, Deputy District Attorney, Alameda County, CA*

Under the implied consent law, a refusal occurs where the driver elects a blood test and cooperates in taking the test, but efforts to administer the test are unsuccessful (i.e., because the technician is having difficulty withdrawing blood), and the driver then refuses to take a breath test. The officer is given reasonable discretion to determine whether it is feasible to give a particular chemical test. *Case/Statutes cited: White v. Department of Motor Vehicles (2011) 196 Cal. App.4th 794; Veh. Code §§ 13353, 23612. (7:55)*

### **"Realignment"**

*with Devallis Rutledge, Special Counsel, Los Angeles CO District Attorney's Office*

Effective October 1, 2011, the "realignment" bill makes many felonies punishable by county jail instead of state prison, and transfers most parole supervision and revocation proceedings from the state to the counties. Violent felonies, serious felonies, registrable sex offenses and new felonies after prior "strikes" are still prison cases, along with about 58 other crimes. *Cases/Statutes cited: Assembly Bill (AB)109. (6:37)*

### **Mistake of Law Invalidates Vehicle Stop**

*with Jeff Rubin, Deputy District Attorney, Alameda County, CA*

A mistake of law does not provide objectively reasonable suspicion to justify a detention. Thus, an officer's detention of a vehicle for having only one Florida license plate violates the Fourth Amendment because California law does not require out-of-state vehicles to display more than a single license plate if the other jurisdiction only issues a single plate-- and Florida only issues a single license plate. California law does require the plate be attached to the rear of the vehicle, but in the instant case, the plate was so attached. *Case/statutes cited: People v. Reyes (2011) 196 Cal.App.4th 856; Veh. Code §§ 5200, 5202. (7:30)*